IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17244 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

==========

SHREE JUNAGADH KELAVANI MANDAL - Petitioner

Versus

STATE OF GUJRAT & 2 - Respondents

==========

Appearance :

MR HJ NANAVATI for the Petitioner.
MR HD DAVE, ASSISTANT GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
MR YOGESH S LAKHANI for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 07/09/2005

ORAL JUDGMENT

1. **Rule.** The learned Advocates appearing for respondent Nos. 1 and 3 waive service of Rule on their behalf. The present petition has been preferred against the order dated 18/08/2005 (Annexure-A to the memo of the petition) and for getting allotment of the

students for the P.T.C. Course at the college established by the petitioner-trust for the Academic Year 2005-06.

2. Senior learned Counsel Mr. N.D.Nanavati, appearing for the petitioner, vehemently submitted that the petitioner is running college for imparting P.T.C. Course. The said college has been given recognition by National Council For Teacher Education (N.C.T.E.) to start P.T.C. College with effect from June 2002 under Section 14(3)(a) of N.C.E.T. Act, 1993, with intake capacity of 50 students. It is also submitted by the learned counsel for the petitioner that once the recognition is given, no authority other than N.C.E.T. can interfere the petitioner in the activities of imparting education under the Act, 1993. There are enough, adequate and sufficient provisions for withdrawal of the recognition under Section 17 of the Act but till recognition is withdrawn, the respondent-State cannot interfere in the activities of the petitioner-trust in imparting P.T.C. Training course under Section 13 of the Act, 1993. There are provisions for inspection by N.C.E.T. Periodical inspections have taken place at the institute of the petitioner. N.C.E.T has taken a visit, no irregularities have been found by N.C.E.T., which is

apex body under the Act, 1993. The said Act is centrally enacted under Entry Number 66 of Schedule (vii) of the Constitution of India. The State has no power to interfere in the functioning of the petitioner, once there is a recognition by the N.C.E.T. An application was preferred by the petitioner before the N.C.E.T. for opening of additional class for P.T.C. Course. In pursuance of this application, one more inspection was carried out by N.C.E.T. On 19/04/2005 and permission of additional class for imparting P.T.C. course was also given by N.C.E.T. On 08/08/2005. Even District Education Officer of State of Gujarat had visited the premises of the petitioner-trust on 17/05/2005, no irregularity was ever pointed out by D.E.O. of the State. No notice is ever been given by N.C.E.T. to the petitioner indicating the irregularities or illegality. It is further submitted by the learned Counsel for the petitioner that previously, an order dated 15/06/2005 was issued without any show cause notice, and therefore, Special Civil Application No. 11844/2005 was preferred. This Court passed order dated 07/07/2005 whereby the Government accepted that fresh show cause notice will be issued, the petitioner will be heard and thereafter, order will be passed. After show cause notice and after hearing, in

pursuance of the order passed by this Court on 07/07/2005 in S.C.A. No. 11844/2005, the Government of Gujarat, for the reasons best known to them had not passed any order. The Government of Gujarat waited for no reason for longer time, students are to be allotted by the Government. On or before particular date if the students are not allotted, perhaps the Trust will miss the bus or boat forever. Therefore, another petition, bearing Special Civil Application No. 16362/2005, was preferred to awake the sense of the Government. Once again Assistant Government Pleader had to make a statement that they are taking positive decision in favour of the petitioner and students for the P.T.C. course will be allotted. Upon his statement another Special Civil Application was also disposed of vide order dated 12/08/2005. This is the third petition in a row. The petitioner is a President of Gujarat State Self Financed P.T.C. Colleges Management and Association and therefore, because of grudge against the petitioner, the State is not deciding the matter, and order at Annexure-A has been passed, whereby Building Use (B.U.) permission is sought for from the petitioner. It is also vehemently submitted by the learned Counsel for the petitioner that there is no such statutory requirement at all. There are no such N.C.E.T.

Regulations, 2002, which are framed under N.C.E.T. Act, 1993. The Government of Gujarat is not insisting for B.U. Permission in any of the college buildings. Even colleges run by the Government may not be having B.U. Permission. Nonetheless, the petitioner has presented B.U. Certificate issued by Executive Engineer, Municipal Corporation of City of Junagadh dated 19/07/2005 (Annexure -A to the memo of the petition).

3. Despite B.U. Certificate, the Deputy Secretary, Education Department insisted for B.U. Certificate vide his order dated 18/08/2005. The petitioner submitted that they have no better evidence than what is presented. The State has to verify whether B.U. Certificate given by the Executive Engineer, Municipal Corporation of City of Junagadh is true and correct or not. Nonetheless, this Court has directed to join Municipal Corporation, City of Junagadh, as party-respondent vide order dated 23/08/2005. Even as per Junagadh Municipal Corporation, the certificate issued at Annexure-B i.e. B.U. Certificate is true and correct. Thus, though there is no statutory requirement, the Deputy Secretary, Education Department is insisting for B.U. Certificate in spite of recognition given by N.C.E.T. and in spite of inspection

carried out by N.C.E.T. under Section 13 of the Central enactment. Somehow or other, the State is not interested in allotment of students to the colleges run by the petitioner and therefore, under one or the other pretext, every time objections have been found by the respondent-State and therefore, every time the petitioner has to prefer separate petition, therefore, order dated 18/08/2005 (Annexure-A) deserves to be quashed and set aside and respondent may be directed to allot students for P.T.C. Course for the Academic Year 2005-06.

4. I have heard learned Counsel, appearing for newly added party – Junagadh Municipal Corporation, who has submitted that the premises in question has been visited by the Executive Engineer of Junagadh Municipal Corporation and certificate dated 19/07/2005 has been issued which is at Annexure-B to the memo of the petition. The same is true, correct, genuine and legal. The construction referred to in the said B.U. Certificate is capable of being used. The construction of ground floor and first floor is over. The older construction is not at all affected by earthquake and the same is in good condition.

5. I have heard learned Counsel for the State, who has submitted that the State is insisting for B.U. Permission which is going to be utilised as college building. It is further submitted by the learned Assistant Government Pleader on behalf of the State that the students are going to sit in the premises and State is worrying about the strength of the building, and therefore, the order dated 18/08/2005 at Annexure – A was passed. The same is true and correct. Therefore, petition deserves to be dismissed.

6. Having heard learned Counsels for both the sides and looking to the facts and circumstances of the case, the provisions of N.C.E.T. Act, 1993 and the Regulations framed therein namely N.C.E.T. Regulations, 2002 coupled with the fact that B.U. Certificate is already issued by Executive Engineer, Municipal Corporation of City of Junagadh dated 19/07/2005 (Annexure-B to the memo of the petition). The learned Assistant Government Pleader, appearing for the State, could not point out any provisions from any of the Act which require B.U. Permission, which is necessary despite the certificate at Annexure – B to the memo of the petition. Already newly added party-Municipal Corporation, City of Junagadh has

stated that the B.U. Permission given by Executive Engineer of Junagadh Municipal Corporation is true and correct. It is a duty of respondent no.3 to measure the strength of the steel and stability of the building. The Education Department cannot sit in appeal against the certificate issued by Executive Engineer. The B.U. permission certificate is already on record in the month of July, 2005. Despite this certificate, it appears that Deputy Secretary of Education Department has insisted for B.U. Permission certificate vide order dated 18/08/2005. It is also submitted by the learned Counsel for the Junagadh Municipal Corporation that building in question has been examined properly. Its older building is not at all affected by the earthquake. The same is in good condition and new construction, wherein ground and first floor construction work is already over, is capable of being used. In fact, the National Council for Teacher Education (N.C.T.E.) has already visited the premises in the month of April, 2005. The N.C.T.E. is working under the central law viz. N.C.T.E. Act, 1993. Even additional class for P.T.C. course has been allotted at the college run by the petitioner-trust. So far as the construction of the building is concerned, looking to the certificate issued by the Executive Engineer (Annexure – B), the same

is capable of being used. It is also submitted by the learned Counsel for the petitioner that there is no such requirement under N.C.E.T. Regulations, 2002. B.U. Permission is already on record. These facts are not appreciated by the Deputy Secretary of the Education Department. It appears that N.C.E.T., which is apex body under the central enactment, has visited the premises and has thereafter given permission of opening of additional class. Giving cumulative effect to the aforesaid facts and circumstances of the case, I hereby quash and set aside order dated 18/08/2005 (Annexure- A to the memo of the petition). Rule is made absolute with no order as to costs. Therefore, I direct respondent-State of Gujarat to follow necessary consequences of quashing of order at Annexure – A. Learned Assistant Government Pleader Mr. H.D.Dave will communicate this order to the concerned authorities of the respondent-State of Gujarat.

(D.N.PATEL, J.)

satishcv